Reeves Brothers, Inc., Bishopville Finishing Division *and* International Union of Operating Engineers, Local 465, AFL–CIO. Cases 11–CA–16065, 11–CA–16188, and 11–RC–6018

March 29, 1996

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On June 29, 1995, Administrative Law Judge Philip P. McLeod issued the attached decision. The Union filed exceptions and a supporting brief, and the Respondent filed cross-exceptions, a supporting brief, and an answering brief to the Union's exceptions. The Union also filed an answering brief to the Respondent's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this decision, to adopt the recommended Order as modified, and to direct a second election.

For the reasons set forth below, we find that the Respondent violated Section 8(a)(1) of the Act by threatening employees with loss of work, layoffs, and plant closure in a captive audience meeting and in individual meetings with supervisors, and interrogating an employee regarding his union sympathies. We find that these unfair labor practices also constitute objectionable conduct warranting the setting aside of the election.

A. *Background*

This case arises from allegations of unfair labor practices and from objections to an election that resulted in a vote of 114 in favor, and 136 against, the Union.[3] The Respondent ran an admittedly strong antiunion campaign that included frequent captive audience meetings. At some of the captive audience meetings, the Respondent presented letters that it received from its two largest commission customers.

The letter from Centennial Textiles, Inc. stated in relevant part:

> If the union is brought in, we will have to give strong consideration to giving some, if not all, of your work to other finishers who are non-union. A strike at Reeves could be devastating to us.

The letter from the president of Pressman-Gutman Co., Inc. stated in relevant part:

> I am extremely upset that there is going to be a union vote at your plant. We have no use for unions. . . . I am putting you on notice that our partnership with Reeves . . . may cease if the union is voted in. I am sorry, but we may simply choose to not continue our partnership if Reeves goes union. Hopefully everyone at Bishopville will come to their senses before it is too late.

In addition to presenting these letters at some of the captive audience meetings, the Respondent posted copies of the letters throughout the facility with the following additional phrases: ''When our customers speak. . . . We'd better listen.'' There is no evidence in the record that the Respondent solicited the customer letters.

The June 1994[4] election was postponed because the Union filed unfair labor practice charges. After tentative settlement of those charges, the election was rescheduled for August 25. The Respondent held a second series of captive audience meetings prior to the August election and again presented the customer letters to the employees. In addition, the Respondent enlarged the letters to 8 by 10 feet and hung the resulting banners from the ceiling near the entrance to the employees' canteen.

The judge found that, in the absence of evidence that the Respondent solicited the letters, the Respondent was privileged to share the letters with the employees under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), and thus, that the Respondent's use and emphasis of the letters during the campaign did not violate the Act nor did it interfere with the employees' freedom of choice. We find that the judge misconstrued the General Counsel's argument. The General Counsel argued in its brief to the judge, and the Union argues in its exceptions to the Board, that statements made by the Respondent's representatives at the

[1] The Respondent and the Union have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the judge's findings.

[2] We adopt the judge's findings that the Respondent did not threaten that it would refuse to bargain in good faith or otherwise deal with the Union or threaten that bargaining would be futile if employees selected the Union to represent them for purposes of collective bargaining. Further, in the absence of exceptions, we adopt the judge's finding that Supervisor Trapp did not threaten Lucius Davis with the futility of being represented by the Union or with plant closure and the judge's finding that Supervisor Plumley did not threaten employee Maxcine Felder with termination in retaliation for engaging in union activities.

[3] At the hearing, the parties resolved issues related to the challenged ballots and the remaining unresolved challenged ballots are not determinative of the outcome of the election.

[4] All dates refer to 1994 unless otherwise noted.

captive audience meetings and during individual employee meetings were not founded on the customer letters but were instead overstatements that misled and coerced the employees in violation of the Act. We find merit in the Union's exceptions.

B. *Violations of the Act*

1. President Cartagine's statements

The judge credited employee Lucius Davis' testimony that the Respondent's president, Cartagine, read the customer letters aloud to employees during a captive audience meeting and then stated that if the Union was voted in to represent employees, those customers *would* no longer want to do business with the Respondent. Davis testified that Cartagine then stated, ''[I]f we lose those two customers, we would probably be working three days a week.'' Cartagine did not testify. Although he credited Davis' testimony, the judge did not analyze whether Cartagine's statements constituted unlawful threats and objectionable conduct. We find that Cartagine's statements violated the Act.

The applicable standard for analyzing Cartagine's statements was set forth by the Supreme Court in *Gissel Packing*:

> [A]n employer is free to communicate to his employees any of his general views about unionization or any of his specific views about a particular union, so long as the communications do not contain a ''threat of reprisal or force or promise of benefit.'' He may even make a prediction as to the precise effect he believes unionism will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to the demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization.

Id. at 618. The judge found that Cartagine stated that Centennial and Pressman-Gutman *would* pull their business in the event of the Respondent's unionization and that the employees would then probably work a 3-day workweek. The customers, however, stated in their letters only that they would *consider* taking work away from the Respondent if the employees voted in the Union. Cartagine did not state that it was *possible* that Centennial and Pressman-Gutman would pull their business if the employees voted for the Union. Thus, Cartagine's statements went beyond the objective facts (what was actually said in the customer letters) and became a threat of reprisal if the employees chose to be represented by the Union.

The facts of the instant case are distinguishable from those in *CPP Pinkerton*, 309 NLRB 723, 724 (1992), in which the Board found the following employer statements not to be a threat of reprisal:

> U.S. Steel [the customer] . . . can place their work elsewhere if we try to raise our wages too high. . . . If the union demands an increase, the client is completely free to cancel our contract and take its business elsewhere. Then we would no longer have any jobs at the U.S. Steel facility.

The employer made these statements based on conversations it had with U.S. Steel managers and based on the provisions of its contract with U.S. Steel. In holding that such language was not a threat of reprisal, the Board emphasized that the employer described the *possibility*, not the probability, of third-party action. The Board noted that the employer ''did not state that any adverse consequences *would* occur if the employees chose to unionize.'' Id. at 724 (Emphasis in the original.)

In contrast, in this case, Cartagine stated that the customers *would* remove their business and, as a result, employees would probably work fewer hours. Cartagine's characterization went well beyond the statements actually made by the customers in their letters to the Respondent. Having gone beyond the customers' actual statements, the Respondent cannot rely on the letters in claiming that its predictions are based on objective fact. As the Court in *Gissel Packing* stated:

> [The employer] can easily make his views known without engaging in ''brinkmanship'' when it becomes all too easy to ''overstep and tumble over the brink.'' *Wausau Steel Corp. v. NLRB*, 377 F.2d 369, 372 (7th Cir. 1967). At least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees.

Id. at 620. Cartagine's statements went over the brink and transformed the customers' concerns into coercive language threatening the employees with loss of work in retaliation for choosing the Union and therefore violated Section 8(a)(1) of the Act.

2. Supervisor Stokes' interrogation of Joseph Davis

The judge credited employee Joseph Davis' testimony regarding a conversation he had with his supervisor, Bud Stokes, following one of the captive audience meetings. According to the credited testimony, Stokes read the customer letters aloud to Davis and asked Davis if he understood them. Stokes stated, ''[O]ur paychecks depend on these two customers'' and then asked Davis, ''Are you with me on this?'' Stokes then asked if Davis (an outspoken union supporter) would talk to his brother, Lucius Davis, about

helping the Respondent to defeat the Union. Stokes said that if the Respondent lost Centennial's and Pressman-Gutman's business, Stokes and Davis both would probably be out of a job, and there would probably be some layoffs. The judge found that Stokes' statements were reasonable predictions based on objective fact and dismissed this portion of the complaint, citing *Rossmore House*, 269 NLRB 1176 (1984), affd. 760 F.2d 1006 (9th Cir. 1985). The judge found that Stokes' comments did not reasonably tend to interfere with Davis' Section 7 rights, relying on the fact that Davis was a well-known union supporter. We disagree with the judge's conclusions regarding the conversation between Stokes and Davis.

The judge's analysis suggests that the Board has a per se rule against finding unlawful interrogations of active, open union supporters. The Board does not have a per se rule but instead examines all the circumstances to determine if the interrogation could reasonably tend to restrain, coerce, or interfere with rights guaranteed by the Act. Id. at 1178 fn. 20.

Examining all the circumstances of Stokes' questioning of Davis, we find that this questioning would reasonably tend to restrain, coerce, or interfere with Davis' Section 7 rights. Nothing in the record suggests that Stokes' questioning was made in a joking or sarcastic manner. Further, Davis responded to Stokes' question in an evasive manner, suggesting that Davis did not feel comfortable discussing the topic with Stokes. Moreover, although Stokes may have been aware of Davis' feelings about the Union, Stokes questioned Davis to determine the effect that the customer letters were having on Davis' support for the Union and attempted to elicit Davis' support in convincing his brother to campaign against the Union. We find that in these circumstances Stokes' questioning of Davis would reasonably tend to restrain, coerce, or interfere with Davis' Section 7 rights and thus constituted an interrogation in violation of Section 8(a)(1).[5]

3. Supervisor Trapp's conversations with Diane Gregg, Lewis Simon, and Eric Gregg[6]

We agree with the judge that Supervisor Wayne Trapp, in individual conversations with Diane Gregg, Lewis Simon, and Eric Simon, threatened reduced hours and possible plant closure if the employees elected to be represented by the Union. The judge credited Diane Gregg's, Lewis Simon's, and Eric Gregg's versions of their individual conversations with Trapp. According to the credited testimony, Trapp: (1) told Diane Gregg that if the Union came in, both Trapp and Gregg would have to look for another job; (2) told Lewis Simon that if the Union came in, the plant would probably shut down; and (3) told Eric Gregg that if the Union was voted, in the plant would close down and the Respondent would not be competitive with other companies and that if the Union was elected hours would be cut back.[7] The judge found that these statements constituted unlawful threats.

In agreeing with the judge, however, we do not rely on his analysis. The judge noted that Diane Gregg, Lewis Simon, and Eric Gregg were active union supporters and were each related by marriage to Supervisor Trapp. The judge ''suspected'' that because of their relationship to Trapp the employees knew that Trapp was only expressing his personal opinions. The judge found that it was an ''extremely close call'' whether Trapp's statements violated the Act, but weighing the circumstances and arguments, he found ''it is better to err on the side of protecting employee rights within the meaning of the Act.''

In determining whether a statement constitutes a threat in violation of Section 8(a)(1) of the Act, the Board does not consider subjective factors but rather whether, under all the circumstances, the statement reasonably tends to restrain, coerce, or interfere with employees' rights guaranteed under the Act. *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992). Under this test it is clear that Supervisor Trapp threatened employees with loss of jobs, plant closure, and reduced work hours if the employees chose the Union. Trapp's statements were made in the absence of any discussion of the customer letters or any other arguably objective fact and were not couched in terms of the possible consequences of unionization. To the contrary, Trapp told the employees that unionization would result in loss of jobs, plant closure, and reduced hours. Under all of these circumstances, we find that Trapp's statements constituted unlawful threats in violation of Section 8(a)(1).[8]

[5] In finding that Supervisor Stokes' interrogation of employee Davis violated Sec. 8(a)(1), Chairman Gould finds it unnecessary to rely on *Rossmore House.*

[6] The Union has excepted to the judge's dismissal of that portion of the complaint that alleges that Supervisor Ray Kelley threatened employee Willie Price with plant closure if the Union prevailed in the election. The judge's ruling was based on his credibility resolutions and, based on our review of the record, we find no basis for reversing those credibility resolutions. See *Standard Dry Wall Products*, supra. Thus, we adopt the judge's dismissal of this portion of the complaint.

[7] We note that in the final paragraph of sec. II,D of his decision the judge credited the employees' versions of these conversations, but then summarized those conversations as follows: ''I find that Trapp did state Respondent *might* lose business if the Union came in, that he and Diane Gregg *might* both need to look for other jobs, that hours *might* be cut back, and even that the plant *might* close.'' (Emphasis added.) We do not rely on the judge's summary of these conversations because it does not accurately describe the testimony credited by the judge.

[8] The Union also contends that Supervisor Stokes threatened Joseph Davis with loss of jobs and layoffs and threatened Simon with loss of business and layoffs and that the Respondent's overstatements of the customer letters tainted the Respondent's continued use

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we will order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. We have found that the Respondent, through both its president and its supervisors, threatened employees with plant closure, job losses, and a reduced workweek and reduced hours if the employees selected the Union. We have also found that the Respondent unlawfully interrogated an employee. Each of these 8(a)(1) violations took place during the critical period preceding the election. Further, the threat to reduce the employees' workweek was made by one of the Respondent's highest ranking officials at a captive audience meeting attended by many employees. Under these circumstances, we find that the Respondent's violations of the Act had a tendency to interfere with the employees' freedom of choice and thus constituted objectionable conduct. See, e.g., *Waste Automation & Waste Management*, 314 NLRB 376 (1994). Therefore, we find it necessary to set aside the election and to direct a new election.

AMENDED CONCLUSIONS OF LAW

1. Respondent Reeves Brothers, Inc., Bishopville Finishing Division is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Operating Engineers, Local 465, AFL–CIO is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. In a meeting with employees, the Respondent, through President Cartagine, threatened to reduce the employees' workweek if the employees selected the Union to represent them for purposes of collective bargaining in violation of Section 8(a)(1) of the Act.

4. The Respondent, through Supervisor Bud Stokes, interrogated Joseph Davis concerning his union activities in violation of Section 8(a)(1).

5. The Respondent, through Supervisor Wayne Trapp, threatened employees Diane Gregg, Eric Gregg, and Lewis Simon that hours would be cut back, that employees would have to look for other jobs, and that the plant would close if employees selected the Union to represent them for purposes of collective bargaining, and the Respondent thereby violated Section 8(a)(1) of the Act.

6. The Respondent's violations of Section 8(a)(1) of the Act had a tendency to interfere with the employees' freedom of choice in the election and constituted objectionable conduct.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Reeves Brothers, Inc., Bishopville Finishing Division, Bishopville, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Threatening employees with loss of work, reduced work hours, reduced workweeks, layoffs, or plant closure if the employees select the Union to represent them for purposes of collective bargaining.''

2. Insert the following as paragraph 1(b), and reletter the subsequent paragraph.

''(b) Interrogating employees concerning their union activities.''

3. Insert the following as paragraph 2(b).

''(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.''

4. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the election in Case 11–RC–6018 is set aside and the case is remanded to the Regional Director for Region 11 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative, as directed below.

[Direction Of Second Election omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid and protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees that hours might be cut back, that the workweek will be reduced, that

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and emphasis of these letters and thereby violated the Act. In light of our findings, we find it unnecessary to pass on these contentions because any additional findings in this regard would be cumulative and would not affect the remedy.

employees will be laid off, that employees will need to look for other jobs, or that the plant will close if employees select the Union to represent them for purposes of collective bargaining.

WE WILL NOT interrogate employees concerning their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

REEVES BROTHERS, INC., BISHOPVILLE FINISHING DIVISION

Jasper C. Brown, Esq., for the General Counsel.
Terry A. Clark, Esq. and *Thomas H. Keim Jr., Esq. (Edwards, Ballard, Bishop, Sturm, Clark & Keim)*, of Spartanburg, South Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case in Bishopville, South Carolina, on March 14 and 15, 1995. On April 28, 1994,[1] the Union filed a petition in Case 11–RC–6018 seeking to represent production and maintenance employees employed by Respondent at its Bishopville, South Carolina facility. An election was scheduled to be held by the Board among those employees on June 16, but due to unfair labor practices charges filed in Case 11–CA–16065, the election was postponed. The parties reached a tentative settlement agreement in Case 11–CA–16065, and the election was rescheduled for and held on August 25. At that time, 114 votes were cast for union representation, 136 votes were cast against union representation, and 36 ballots were challenged. At the hearing, the parties resolved issues related to a sufficient number of challenges so that the challenged ballots would no longer affect the outcome of the election.

The Union filed objections to the election and the unfair labor practice charge in Case 11–CA–16188, which raised similar issues. On October 20, an order consolidating cases and complaint and notice of hearing issued. Issues raised by the objections are consolidated for hearing. On October 13, the Regional Director revoked his prior approval of the settlement agreement in Case 11–CA–16065 because of the alleged violations raised in Case 11–CA–16188.

In its answer to the consolidated complaint, Respondent admitted certain allegations, including the filing and serving of the charges; its status as an employer within the meaning of the Act; the status of International Union of Operating Engineers, Local 465, AFL–CIO as a labor organization within the meaning of the Act; and the status of certain individuals as supervisors and agents of Respondent within the meaning of Section 2(11) of the Act. Respondent denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the hearing, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On April 18, 1995, counsel for the General Counsel and Respondent filed timely briefs, which have been duly considered. On the entire record in this case, and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Reeves Brothers, Inc., Bishopville Finishing Division is a Delaware corporation, with a facility at Bishopville, South Carolina, where it is engaged in the business of finishing textile goods. In the regular course and conduct of its business, Respondent annually purchases and receives at this facility goods and products valued in excess of $50,000 directly from points located outside the State, and annually sells and ships from its facility products valued in excess of $50,000 directly to points located outside the State.

Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

International Union of Operating Engineers, Local 465, AFL–CIO is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Respondent is engaged in the business of dyeing and finishing fabric at its Bishopville facility. At this facility, Respondent employees approximately 275 to 300 production and maintenance employees. As is more fully described below, a significant portion of its business at this facility is done on a commission basis.

Commencing in mid-March 1994, the Union began an organizing drive at Respondent's Bishopville facility. Within the facility, the campaign was led by an in-plant employee organizing committee, made up of people whose names were supplied to Respondent by the Union.

B. *The Customer Letters*

Respondent's two largest commission customers are Centennial Textiles, Inc. and Pressman-Gutman Co., Inc. When these two customers learned of union activity at Respondent's Bishopville facility, both wrote to Respondent in May 1994 expressing concern over their continuing relationship if the Union should win the Board-conducted election. The letter from Pressman-Gutman states in part, ''In view of our long friendship, and so there are no surprises, I am putting you on notice that our partnership with Reeves, Bishopville Finishing Division may cease if the Union is voted in.'' The letter also states, ''I am sorry, but we may simply choose to not continue our partnership if Reeves goes Union.'' The letter from Centennial Textiles states in part, ''If the Union is brought in, we will have to give strong consideration to giving some, if not all, of your work to other finishers who are non-union. A strike at Reeves could be devastating to us.''

Respondent presented the customer letters to employees in two series of meetings. The first series took place in June 1994 when the election was scheduled to be held that month. When the election was rescheduled to August 25, Respond-

[1] All dates are in 1994 unless otherwise indicated.

ent held a second series of meetings where employees were again made aware of the letters. In addition, Respondent posted copies of the letters on a poster board in its facility, along with its own comment, ''When our customers speak. . . . We'd better listen.''

In August 1994, prior to the Board-conducted election, Respondent enlarged the two letters which were printed on banners each 8 by 10 feet. The two banners were then hung from the ceiling of the plant near the canteen/breakroom entrance.

Counsel for the General Counsel contends that by Respondent making known and emphasizing to employees the contents of these letters, and enlarging the letters on banners hung within the facility, Respondent adopted the contents of the letters so that Respondent itself threatened employees with a loss of work and possible plant closure if the employees elected to be represented by the Union. I reject this argument. It is essential to note at the outset there is absolutely no evidence, and indeed counsel for the General Counsel does not even make the claim, that the letters are not genuine. There is no allegation, and no evidence whatsoever that Respondent in any way participated in creating these letters or solicited them for use in the preelection campaign. If such were the case, I would reach a much different conclusion. As the record stands, however, no evidence was presented to even call into question the legitimacy of the customer letters.

Approximately 50 percent of Respondent's business at the Bishopville facility is commission work. In commission work, Respondent is sent fabric by a customer. Respondent dies and finishes the fabric to specification, and returns the fabric to the customer. The customer always owns the fabric, with Respondent performing the value-added process of dyeing and finishing. Pressman-Gutman and Centennial Textiles together comprise approximately 60 percent of Respondent's commission business and 70 percent of the total work performed in the dye house department.

The Supreme Court has made it clear that an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a threat of reprisal or force or promise of benefit. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). In that same decision, the Supreme Court made it equally clear that an employer is also free to make a prediction as to the precise effects he believes unionization will have on his company provided the prediction is carefully phrased on the basis of objective fact to convey demonstrably probable consequences beyond his control. In *Michael's Markets*, 274 NLRB 826 (1985), the employer distributed copies of a letter written by an employee describing his experiences with a union at a former employer. Referring to the contents of the letter and the fact that respondent there distributed it to employees, the Board stated: ''Of course the employees are free to draw their own conclusions therefrom, but employee conclusions are certainly not to be viewed as employer predictions. The exercise of free speech in these campaigns should not be unduly restricted by narrow construction.''

I find that where there is no evidence whatever that Respondent solicited these letters or participated in their creation, it was privilege to share with employees these letters received from customers. By enlarging the size of the letters and printing them on banners 8 by 10 feet, it can certainly be said that Respondent was emphasizing the letters. But where, as here, no evidence is presented to even call into question the legitimacy of the letters, it is impossible to say that Respondent over emphasized their importance, either to it or to employees. Accordingly, I shall dismiss those complaint allegations which allege by posting of these letters Respondent threatened employees with loss of jobs, threatened employees with loss of business, or otherwise violated Section 8(a)(1) of the Act.

C. *Respondent's Meetings with Employees*

During the preelection campaign, Respondent held several meetings with employees. The main spokespersons for Respondent throughout these meetings were Administration Vice President Patrick Walsh and Manufacturing Vice President William Neal. Apparel Textile Group President Anthony Cartagine also addressed employees on occasion. Walsh, Neal, and Cartagine are all from Respondent's corporate headquarters in Spartanburg, South Carolina. As a part of Respondent's preelection campaign during these meetings, Respondent presented employees with various statistical information, copies of the National Labor Relations Act, and case law. Respondent also covered various topics including the decline of unions, the significance of a union constitution, bargaining, and the customer letters already described above.

Counsel for the General Counsel contends that at these employee meetings Walsh, Neal, and Cartagine threatened employees with loss of jobs, threatened employees with loss of business, threatened that it would refuse to bargain in good faith with the Union, threatened to reduce the work hours and workweek of employees, and threatened employees that bargaining would be futile if they selected the Union to represent them. Counsel for the General Counsel called eight witnesses to testify regarding these meetings. Five of the eight, Carl Parrot, Diane Gregg, Maxcine Felder, Eric Gregg, and Lewis Simon are all blood relatives. Two more of the eight, Joseph Davis and Lucius Davis are brothers. All eight witnesses were active and open supporters of the Union, and in fact were members of the Union's organizing committee.

Joseph Davis testified that he attended an employee meeting held in May during which Neal was the primary speaker. According to Davis, Neal read the two customer letters from Centennial and Pressman-Gutman. After reading the letters, Neal stated that if Respondent lost those two customers, ''We'd all be out of a job.'' According to Davis, Neal emphasized again that employees' jobs depended on this and that Respondent did not want to lose these two customers. On cross-examination, Davis admitted that he was a very outspoken supporter of the Union. In fact, after the campaign got well under way, Davis was excluded from attending meetings which Respondent held with employees. Davis impressed me as candidly biased toward the Union, but certainly not wholly incredible. On the other hand, I have no doubt that Davis embellished the facts somewhat in claiming Neal told employees that if they lost these two customers employees would be out of a job completely. Lucius Davis, Joseph Davis' brother, testified as more fully described below that Cartagine told employees if Respondent lost these two customers employees would probably work a 3-day workweek. I find Lucius Davis' testimony to be much more

logical and credible about the predictions made by any of Respondent's managers in meetings with employees.

Employee Lucius Davis testified that he attended a meeting in May during which Cartagine, Walsh, and Neal all spoke to employees. Cartagine first read the two customer letters to employees. According to Davis, after reading the letters, Cartagine told employees that if the Union was voted in to represent employees those customers would no longer want to do business with Respondent. According to Davis, Cartagine went on to say that if Respondent lost those two customers employees would probably work only a 3-day workweek. Respondent did not call Cartagine as a witness.

Davis also testified that in this same meeting or another meeting held in May Walsh addressed employees and told them that even if employees voted in the Union Respondent ''would not bargain with the Union in fair faith.'' Based on my observation of him as a witness, I cannot credit Davis regarding this alleged statement. Davis' demeanor convinced me immediately that he was either guessing at what Walsh said and/or interpreting what Walsh said as Davis may have understood it. Davis also testified Walsh stated all he would have to do is say ''No'' to everything. On cross-examination, Davis admitted Walsh told employees that Respondent would bargain in good faith with the Union, and that in fact Walsh said this five or six times. Davis admitted Walsh told employees in the meeting that Respondent simply had the right to say no to union demands.

Eric Gregg testified that he attended an employee meeting in May conducted by Walsh and Neal during which Neal is supposed to have told employees that they could lose all their benefits if the Union was voted into the plant. Gregg testified that Neal also stated Respondent would not bargain with the Union. According to Gregg, Neal told employees that the first thing a union wants in bargaining is union dues checkoff. Neal then told employees that Respondent did not have to agree to anything, and that it would only say ''No.'' On cross-examination, Gregg repeatedly maintained that Neal stated Respondent would not bargain with the Union, yet admitted that Walsh told employees benefits could go up, down, or remain the same as a result of bargaining. I have serious problems about the accuracy of Gregg's testimony, particularly as it relates to important details, and therefore to what Walsh and Neal actually told employees. For example, Gregg testified about one particular poster which Respondent put up in the campaign concerning ''highways or union ways.'' As the record was more fully developed by later witnesses, the evidence showed that Gregg was partially correct as it related to the overall subject, but very wrong about significant details.

Employee Lewis Simon also testified concerning the meetings held by Walsh and Neal in May or June. Simon testified Walsh told employees that in negotiations there were three options: that employees could win, lose, or everything could remain the same. Simon went on to testify that Walsh told employees all the Company had to do was ''negotiate in good faith.'' According to Simon, Walsh continued by saying that if the Union presented a proposal the Company did not like, all the Company had to do was say ''No.''

Walsh and Neal both testified concerning their remarks to employees in meetings throughout the preelection campaign. Both testified extensively regarding the specific remarks made to employees during these meetings, and both impressed me as credible. Walsh candidly admitted telling employees that bargaining was a hardcore business deal, and that wages and benefits could go up, down, or remain the same. Walsh also candidly admitting telling employees that there was no legal obligation to reach an agreement with the Union. Walsh admitted telling employees that if the Union made demands with which Respondent did not agree Respondent could and would say no. Similarly, Neal candidly admitted telling employees Respondent could and would say no to union proposals that it could not accept. Adding to the credibility of Walsh and Neal is the fact that Respondent introduced both the transparencies and ''crib notes'' used by Cartigine, Walsh, and Neal in meetings with employees. Walsh and Neal credibly denied ever telling employees that Respondent would not bargain with the Union or would not bargain in good faith. I note that two of the General Counsel's witnesses, Lewis Simon and Lucius Davis, both admitted Walsh told employees Respondent would bargain in good faith, and David admitted Walsh said this as many as five or six times. The transparencies introduced by Respondent also show that in their presentations Respondent's managers told employees that Respondent would bargain in good faith. Similarly, both the credible testimony of Walsh and Neal and the transparencies themselves show that employees were told simply Respondent had the right to say no to union demands with which Respondent did not agree.

As indicated above, Respondent held other meetings with employees during August as the election approached. Employee Carl Parrot testified that he attended such an employee meeting conducted by Walsh and Neal during the week of the election. According to Parrot, Neal spoke first to the employees and stated that customers of Respondent did not want to send goods into a plant that was union because the quality suddenly drops because of sabotage. According to Parrot, Neal then said it would be in the employees' best interest to vote no and keep the Union out. Parrot testified Neal told employees that the only thing bargaining in good faith meant was that he was on one side of the table, and the Union on the other side of the table, and that whatever proposals the Union presented, the Company did not have to agree to anything. Parrot asserted Neal stated that in response to union proposals all he had to say was ''No.'' According to Parrot, Walsh also addressed employees concerning the subject of bargaining. Parrot testified that Walsh, like Neal, said the Company did not have to agree to anything, and all it had to say was ''no'' to union proposals.

I am convinced that Parrot testified not so much to what Neal and Walsh actually said, but what Parrot understood them to mean. Parrot testified on cross-examination; for example, Walsh told employees that ''in bargaining you could end up with the same or less, but not more.'' Lewis Simon, on the other hand, admitted that Walsh told employees they could end up with more, less, or the same. Walsh and Neal both testified credibly they told employees that bargaining might result in more, less, or the same for employees. Further, the transparencies actually used by Walsh and Neal in their presentations to employees specifically contain language showing that they told employees they might end up with more, less, or the same.

Eric Gregg also testified concerning a meeting conducted by Walsh and Neal during the week of the election. According to Gregg, Neal again said that he would not bargain with

the Union, and that all he had to say was ''No'' to union proposals. Both Walsh and Neal credibly denied telling employees that Respondent would not bargain with the Union. Walsh and Neal also candidly admitted telling employees Respondent was not obligated to agree with union proposals which Respondent thought were unreasonable and that Respondent could say ''No'' to such proposals. Walsh and Neal credibly denied telling employees, however, that all Respondent had to do was be present and say ''No'' to union proposals. Walsh and Neal both testified, and are corroborated by some of counsel for the General Counsel's witnesses, that they told employees Respondent would bargain in good faith.

It would be naive to believe that Walsh and Neal did not accentuate some of the most negative aspects of bargaining during their meetings with employees. It does not follow, however, that Respondent threatened employees with futility of selecting a union to represent them. I credit Walsh and Neal, and I find that they simply described to employees the reality of collective bargaining, pointing out that wages, hours, and working conditions could go up, down, or remain the same. I find that Walsh and Neal did not tell employees Respondent would refuse to negotiate with the Union. On the contrary, Walsh and Neal told employees that Respondent would negotiate in good faith, but that it was not required to agree with union proposals which Respondent considered unreasonable. To such proposals Respondent could and would say ''No.'' I find that Respondent's description of bargaining to employees was protected by Section 8(c) of the Act. Accordingly, I shall dismiss paragraphs 8(c), (I), (j), and (k) of the complaint.

D. *Conversations Between Supervisors and Employees*

Joseph Davis testified that right after one of the employee meetings in May 1994, his supervisor, Bud Stokes, met with Davis. Stokes read the letters from Centennial and Pressman-Gutman to Davis again. Stokes then asked Davis if he understood them. That much is admitted by Stokes. Davis testified that Stokes then went on to say, ''Our paychecks depend on these two customers,'' and Stokes asked Davis, ''Are you with me on this?'' Davis testified he told Stokes that he wanted to hear both sides. According to Davis, Stokes then asked Davis to talk to his brother Lucius Davis to help the Company defeat the Union. In response to leading questions by counsel for the General Counsel, Davis testified that Stokes then said, referring to Centennial and Pressman-Gutman, if Respondent lost these customers both Stokes and Davis would probably be out of a job, and there would probably be some layoffs, including Stokes and Davis themselves.

While Stokes denied mentioning Davis' brother in this conversation and denied threatening layoffs, Stokes admitted telling Davis there might be some ''short time'' if customers moved their business elsewhere. On cross-examination, Stokes admitted he told Davis ''there could be short time layoffs,'' albeit in regard to loss of business, unrelated to union activity. Davis impressed me as accurately describing this conversation, and I credit his version.

Counsel for the General Counsel contends that, by his remarks, Stokes threatened Davis with loss of jobs and layoffs in retaliation for employee union activity in violation of Section 8(a)(1) of the Act. I cannot agree with counsel for the General Counsel. It should first be noted that Joseph Davis was a very outspoken supporter of the Union and a member of the Union's organizing committee. Second, it is quite apparent that the essence of this entire conversation revolved around the letters from Centennial and Pressman-Gutman, and the logical implications which followed from those letters. Considering the importance of these two customers to Respondent, I find that Stokes' statements to Davis were a reasonable prediction based on objective facts about what would probably happen if Respondent in fact lost those two customers. The other comments by Stokes to Davis must be placed in the context that Davis was a known outspoken supporter of the Union. In such circumstances, I find that Stokes' remarks did not reasonably tend to interfere with Stokes' Section 7 rights. *Rossmore House*, 269 NLRB 1176 (1984).

Employee Lewis Simon testified that Stokes also met with him privately right after one of the employee meetings in May 1994. Simon, like Davis, testified that Stokes called him into Stokes' office to discuss the customer letters from Centennial and Pressman-Gutman. Simon, like Davis, was an avid and open supporter of the Union, and also one of the members of the Union's organizing committee. Simon testified credibly that Stokes read the letters to him and asked Simon if he understood them. Simon replied that he did, but that he did not believe the letters and thought they had been solicited by Respondent. According to Simon, Stokes commented that ''those companies comprised 70 percent of our business in the dye house and if we lost those customers, he didn't see any way we could continue to run it.'' Simon added that Stokes said he ''thought the plant would shut down if we lost those customers.'' With respect to this last alleged statement by Stokes, I suspect Simon is stretching the truth a bit. Stokes admitted he met with Simon, just as he admitted he met with Davis. Stokes testified he read the letters to Simon and told Simon that the customers would consider ceasing their business with Respondent if the Union was voted in the plant. Stokes credibly denied threatening that the plant might close, and candidly acknowledged he told Simon that their could be some ''short time layoffs'' if the customers moved their business. I credit Stokes. Just as it was in the conversation between Stokes and Davis, the key to this conversation between Stokes and Simon was clearly the impact of the customer letters from Centennial and Pressman-Gutman. In this context, I find that Stokes' comments were reasonable predictions based on objective fact protected by Section 8(c) of the Act under the standards set forth in *Gissel*, supra. Accordingly, I shall dismiss this allegation from the complaint.

Employee Lucius Davis, who works in the finishing lab and is supervised by Ken Catoe, testified that in May 1994 Supervisor Wayne Trapp approached him one day while Davis was working. Davis, who was an open and avid union supporter and on the union organizing committee, could not recall how the conversation began, but testified that Trapp ''mentioned that if we get a union that it wouldn't do nothing for us . . . and if the Union was voted in that the plant probably would close down.'' Trapp denied even having such a conversation with Davis. Trapp testified that he had only one conversation with Lucius Davis concerning the Union, and that it occurred in the canteen/breakroom on the day after the Board-conducted election. According to Trapp,

Davis was telling other employees that Respondent was trying to keep things the way they were in 1940. Trapp told Davis that if he was going to make such a statement, ''tell it right.'' Trapp then pointed out Respondent's business was not even there in 1940.

As already mentioned above, I have doubt about the accuracy of Davis' testimony. Davis testified on direct examination, for example, that Walsh told employees Respondent would not bargain with the Union, and then admitted on cross-examination Walsh said Respondent would bargain in good faith as many as five or six times. I am convinced from observing Davis as a witness that he was frequently guessing and consistently interpreting what may have actually been said to him into words which described what he understood by what was said to him. I find that I simply cannot rely on Davis' description of his conversation with Supervisor Trapp. It is possible that some conversation did occur, but I have such doubt about the accuracy of Davis' testimony that I simply cannot rely on his description of the specific comments made. Accordingly, I shall dismissed the allegation that Supervisor Trapp threatened Davis with the futility of being represented by a union or with plant closure in the event employees selected a union to represent them.

Supervisor Trapp is alleged to have had conversations with several employees who are related by blood, and to whom Trapp is related by marriage. Diane Gregg, Eric Gregg, and Lewis Simon all testified that Trapp spoke to them about the Union at various times prior to the Board-conducted election. As noted, Diane and Eric Gregg are siblings, while Lewis Simon is their cousin. All of them are related to Trapp's former wife, with whom Trapp still maintains a relationship. Diane Gregg, who is supervised by Bud Stokes, testified that in a conversation during May 1994 Trapp remarked to her ''that we didn't need a union in the plant because if the Union came in, both [Trapp and Gregg would have to] look for another job.'' Trapp denied the conversation. According to Trapp, the only conversation he had with Diane Gregg concerning the Union was one day when Gregg stopped him and started asking him questions. According to Trapp, he told Gregg that he could not talk about that. Gregg is alleged to have responded that Respondent needs a black female human resource manager. I have no doubt that the conversation described by Trapp did take place, but I do not credit him that this was the only conversation he had with Diane Gregg concerning the Union. I credit Diane Gregg regarding the conversation she described.

Lewis Simon testified that he also had a conversation with Trapp during May concerning the Union. Simon admitted that he initiated the conversation with Trapp himself, telling Trapp that as a supervisor he knew what Trapp thought about the Union. Trapp in turn asked Simon what he thought. Simon told Trapp he thought he would be better off with a union. According to Simon, Trapp replied that he did not think the Union was good for the plant and that if the Union came in the plant would probably shut down. Trapp admitted having a conversation with Simon. According to Trapp, Simon asked him about the Union and Trapp related his unpleasant experience as a member of the Teamsters Union. Trapp denied telling Simon that he thought the plant would shut down. I credit Simon.

Eric Gregg testified that he had two conversations with Trapp concerning the Union, one in late May and one the day prior to the Board-conducted election. Gregg's description of the first conversation is much like the conversation between Trapp and Lewis Simon. Gregg testified that Trapp stopped to talk to him at Gregg's work station. Trapp told Gregg about having previously been involved with a union, and stated that a union could not do anything for employees. Gregg testified that Trapp then told him the plant would close down and the Company would not be competitive with other companies if the Union was voted in the plant. Trapp acknowledged having a conversation with Gregg about the Union. Trapp admitted he told Gregg that if the Union came in, the plant might lose its competitiveness. Trapp denied making a statement to Gregg that the plant would close down. I credit Gregg.

Gregg testified that in the second conversation with Trapp, on the day prior to the Board-conducted election, Trapp told Gregg that he hated to see him through away his future, and if the Union was elected, hours would be cut back. Trapp asked Gregg how he was going to vote. In response, Gregg showed Trapp the union T-shirt Gregg was wearing. Trapp denied threatening Gregg with reduced hours. Trapp admitted having a conversation with Gregg about 3 days before the election in which he tried to explain a sample ballot to Gregg. According to Trapp, when he offered to go over the sample ballot with Gregg, Gregg responded that Trapp could not tell him how to vote. Trapp contends he simply told Gregg to vote his choice and the conversation ended. I find that both conversations took place.

As noted, Trapp admits certain conversations and denies others with these three individuals. Trapp contends that each of these three individuals lied under oath regarding certain statements attributed to him because they are hostile toward him for divorcing his former wife, their relative. Trapp has been separated from his wife for the past 8 years. According to Trapp, he nevertheless attended a Gregg family reunion with his former wife in July 1994 where some family members showed animosity toward him. Trapp admitted, however, that neither Diane Gregg, Eric Gregg, nor Simon has shown any hostility toward him. Trapp's would-be defense concerning family hostility tends to cut both ways. While it is of course possible that family members would make up stories about Trapp because of hostility towards him, it is just as possible that he would make statements to such people, either because of the family relationship or because of hostility toward them, which he might not make to other employees.

As indicated, Trapp admits certain of these conversations, denying only specific remarks attributed to him. Considering all the evidence, I am convinced that Trapp in fact had the various conversations described above with these ex-in-laws who he well knew were active supporters of the Union. I find it an extremely close call as to whether Trapp's statements in these conversations can reasonably be said to have objectively tended to interfere with employees' Section 7 rights and therefore violate Section 8(a)(1) of the Act. On the one hand, I find that Trapp did state Respondent might lose business if the Union came in, that he and Diane Gregg might both need to look for other jobs, that hours might be cut back, and even that the plant might close. These are often described as ''hallmark violations'' of the Act. On the other hand, all of these employees were extremely active union supporters and on the Union's organizing committee, in addi-

tion to being Trapp's relative by marriage. Often times it was the employees who started these conversations, not Trapp. I strongly suspect that Diane Gregg, Lewis Simon, and Eric Gregg all knew full well because of their longstanding relationship to Trapp that he was simply expressing a personal opinion which could in no way be attributed to Respondent. That is particularly true of the conversation between Lewis Simon and Trapp. For whatever reason, however, Respondent did not develop this point on cross-examination as it might have. Weighing all the circumstances, and recognizing full well the weight of argument on both sides, I believe it is better to err on the side of protecting employee rights within the meaning of the Act, which is its stated purpose. Accordingly, I find that Trapp's comments to these employees, including threats of reduced hours and possible plant closure, violated Section 8(a)(1) of the Act.

E. *Alleged Threat By Supervisor Bud Plumley to Maxcine Felder*

Maxcine Felder has been employed by Respondent for approximately 6 years. During 1993, she took time off work for maternity leave. On her return to the plant, Felder worked on several jobs pursuant to Respondent's job bid procedure. Also on her return to work, Felder became actively involved with the Union. Felder wore union buttons in the plant and, like other witnesses called by counsel for the General Counsel, Felder was a member of the Union's organizing committee.

Felder testified that in late May or early June 1994 she worked on the Themosol machine for a brief period under the supervision of Bud Plumley. According to Felder, during the brief period she was under Plumley's supervision, Plumley approached her at the Themosol machine one day and told her that if she did not learn the job in 10 days, she would have to leave. Felder testified that it normally takes approximately 6 weeks to learn how to operate this machine. Felder viewed Plumley's statements to be an unreasonable demand, and from this she concluded she was being threatened and discriminated against because of her support for the Union. Counsel for the General Counsel makes the same argument.

Cliff Neal testified that Plumley had retired approximately 1 month prior to the hearing and, despite its best efforts, Respondent was unable to locate Plumley to testify. Respondent acknowledged that Felder was an open supporter of the Union.

When Felder was ready to return to work from maternity leave in November 1993, there were no jobs immediately available, and she was placed on temporary layoff. Felder was called back and returned to work in May 1994. After her return to work, Felder was placed in numerous jobs for short periods. From May 2 to 10, she worked as a material handler in the shipping warehouse. When she was unable to adequately perform this job, Felder was transferred to a material handler's job in the Themosol or continues dye range department, where she worked from May 11 to 22. It was in this job that she worked under the supervision of Bud Plumley, not as an operator of the Themosol machine but as a material handler simply bringing fabric to the machine. When this job did not go well either, Felder was transferred to the dye house as a machine operator, where she worked from May 23 to June 5. Within the dye house, she then transferred on June 6 to a scutcher operator position which she still holds. Felder's wages were increased to the top pay for that job on June 23, 1994.

During the time that Felder was on layoff status, Respondent instituted a job bidding procedure which became effective January 1, 1994. Respondent held meetings with employees to explain the procedure and maintains a copy of the job bidding policy on the bulletin board. Felder, however, was off work when this procedure was instituted. The job bid policy, introduced as an exhibit by Respondent, specifically provides that employees must make satisfactory progress within a 10-day period in any new position. Although Felder remembered that there was a job bid policy posted on the bulletin board, Felder claimed that it did not contain the provision employees had 10 days in which to make satisfactory progress in a position. I do not credit this aspect of Felder's testimony.

Felder's own testimony shows that she was not doing well on any of her first three jobs on her return to work in May. Respondent continued to move Felder from job to job until she was able to adequately perform one. Shortly thereafter, Respondent gave Felder top pay on that job. Respondent's treatment of Felder is completely inconsistent with her claim, and that of counsel for the General Counsel, that Felder was threatened or discriminated against because of her union activity. Respondent made no effort whatever to take action against Felder although it is clear she had problems with several of the jobs assigned her on her return to work. Rather, Respondent made every effort to accommodate Felder. While Respondent was unable to locate Plumley to testify in this proceeding, the facts presented show that the remark Plumley made to Felder, even as described by Felder, is reasonably attributable to the job bid procedure which requires that an employee show progress within a 10-day period. I reject the assertion that Felder was unlawfully threatened or discriminated against in any way by Respondent, and I shall dismiss that allegation from the complaint.

F. *Incident Between Supervisor Ray Kelley and Willie Price*

Employee Willie Price is employed in the maintenance department. During the union campaign, Price's supervisor was Clark Lange. Price was an active supporter of the Union, regularly wearing union T-shirts and a union cap. Price was also on the union organizing committee.

Price testified that on August 25, the day of the election, Supervisor Ray Kelley had no fewer than three conversations with Price in Kelley's office. According to Price, Kelley called him in to Kelley's office and told Price that the Union ''couldn't do nothing for us.''

Price testified that in the second conversation with Kelley on the day of the election, Kelley threatened that if the Union did come in the plant would close down. Price testified that he was ''playing along with [Kelley's] game'' because Price had already voted. Consequently, according to Price, he deceived Kelley into believing he was contemplating changing his mind about the Union. According to Price, he even told Kelley during the third conversation that he had voted against the Union. I find Price's testimony incredible.

Much more credible was Kelley's testimony in which he described how Price seemed to intentionally attempt to irritate him about the Union. Kelley testified credibly that he

had no conversation with Price on the day of the election, but that he did have a conversation with Price on August 23, 2 days prior to the election. Kelley testified that as he was walking toward his office, Price flipped his union badge on his cap, and said to Kelley, ''Ain't that pretty?'' Kelley admits he called Price into his office, pointed at the cap and told Price ''We don't need this thing.'' Price then asked Kelley what would happen if the Union was voted in, and specifically would the plant close down. Kelley testified credibly that he responded, ''No, the plant won't close down because of this union or any union. Our customers is what we stay in business for. We need our customers and only our customers can close the plant down. A union won't close the plant down. If we don't have the business and we don't have customers, that's the only thing that will ever close this plant down.''

I have no trouble crediting Kelley over Price. Kelley was extremely candid in admitting that Price regularly irritated him by various remarks concerning the Union, Price's union cap, and union buttons. I have no doubt Price made every attempt to provoke Kelley by asking Kelley directly what would happen if the Union was voted in and whether the plant would close down. I found Kelley altogether credible, and I credit his testimony regarding his response to Price's questions. I find that Kelley did not threaten plant closure or other retaliation in response to employee union activity, and I shall dismiss that allegation from the complaint.

Analysis and conclusions

It is the Board's usual policy to direct a new election whenever an unfair labor practice occurs during the critical period between the filling of the representation petition and the Board-conducted election. Conduct violative of Section 8(a)(1) of the Act is considered, a fortiori, to interfere with the exercise of a free and untrammeled choice in an election. The Board, however, has departed from this policy in recent years where it is virtually impossible to conclude that the misconduct could have affected the election results. Counsel for the General Counsel and Respondent agree that in determining whether the election should be set aside, several factors should be considered, including the number of violations of the Act, their severity, the extent of their dissemination, the size of the bargaining unit, and other factors which might be relevant. *Clark Equipment Co*., 278 NLRB 498 (1986); *Super Thrift Markets*, 233 NLRB 409 (1977).

In the instant case, I have dismissed the vast majority of allegations that Respondent threatened the futility of selecting a union, threatened a refusal to bargain with the Union, threatened plant closure, or otherwise threatened retaliation against employees for selecting the Union to represent them. The only violations which I have found occurred in conversations between Supervisor Trapp and three employees who are related to him by marriage. The incidents involving these three employees occurred in a bargaining unit of almost 300 employees, and in my view represent isolated incidents which are not sufficient to affect the results of the election. There is no evidence whatever that statements by Trapp were disseminated beyond the individuals directly involved. See *Coca-Cola Bottling Co*., 232 NLRB 717 (1977). Accordingly, I dismiss the Union's objections to the election and recommend the Board certify the election results.

Conclusions of Law

1. The Respondent, Reeves Brothers, Inc., Bishopville Finishing Division is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Operating Engineers, Local 465, AFL–CIO is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. By posting letters from customers, Respondent did not threaten employees with loss of jobs, threaten employees with loss of business, or otherwise violate Section 8(a)(1) of the Act, and those allegations are dismissed.

4. In meetings with employees, Respondent did not threaten employees with loss of jobs, threaten that it would refuse to bargain in good faith or otherwise deal with the Union, unlawfully threaten to reduce the workweek and work hours of employees, or threaten employees that bargaining would be futile if employees selected the Union to represent them for purposes of collective bargaining in violation of Section 8(a)(1) of the Act, and those allegations are dismissed.

5. Respondent, through Supervisor Bud Stokes, did not threaten employees with loss of jobs or layoffs, threaten employees employees with loss of privileges or benefits, interrogate employees concerning their union activities, or threaten employees with plant closure in violation of Section 8(a)(1) of the Act, and those allegations are dismissed.

6. Respondent, through Supervisor Wayne Trapp did not threaten employee Lucius Davis with futility of being represented by the Union or with plant closure in violation of Section 8(a)(1) of the Act, and that allegation is dismissed.

7. Respondent, through Supervisor Wayne Trapp did threaten employees Diane Gregg, Eric Gregg, and Lewis Simon that hours might be cut back, that employees might need to look for other jobs, and that the plant might close if employees selected the Union to represent them for purposes of collective bargaining, and Respondent thereby violated Section 8(a)(1) of the Act.

8. Respondent, through Supervisor Bud Plumley, did not threaten employees with termination if they failed to meet a more stringent standard of performance in retaliation for engaging in union activities in violation of Section 8(a)(1) of the Act, and that allegation is dismissed.

9. Respondent, through Supervisor Ray Kelley, did not threaten plant closure or other retaliation if employees selected the Union to represent them, and that allegation is dismissed.

10. Respondent did not otherwise violate the Act.

11. The unfair labor practices which Respondent has been found to have engaged in are isolated incidents which are not sufficient to affect the results of the Board-conducted election. Accordingly, the Union's objections to the election are dismissed, and it is recommended that the Board certify the election results.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Reeves Brothers, Inc., Bishopville Finishing Division, Bishopville, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that hours might be cut back, that employees might need to look for other jobs, and that the plant might close if employees select the Union to represent them for purposes of collective bargaining.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Bishopville, South Carolina facility copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] If no exceptions are filed as provided by 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''